

deforming the leaf spring to abut the other of the two telescoping parts sufficiently to create friction sufficient to restrain relative motion but allow a user to move the parts relative to each other by hand.

67. (Previously Presented) The clamp assembly of Claim 1, wherein the at least one cap has opposing ends each abutting a different one of the inclined surfaces of a V-shaped notch and a center between the ends which center does not abut either inclined surfaces.

68. (Previously Presented) The clamp assembly of Claim 1, wherein the inclined surfaces forming each V-shaped notch have opposing sides and ends, and the cap extends over those ends and sides.

#### REMARKS

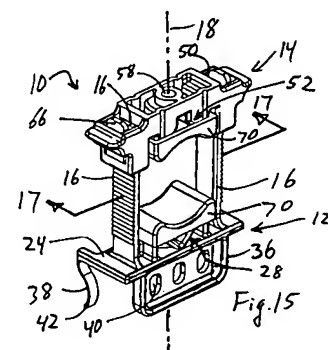
In the Office Action of July 9, 2007, all claims which were not withdrawn were rejected as obvious over Ismert or Ismert combined with Aremka. Several dependent claims are amended and the reasons for allowing the independent claims are discussed below.

#### Section 103 Rejection On Ismert

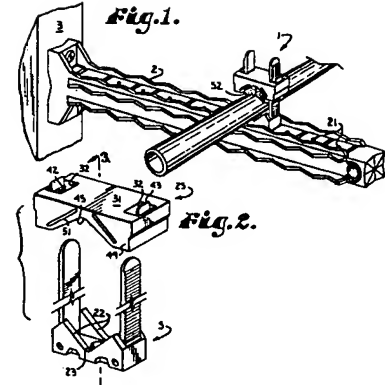
Claims 1-6, 15, 17-20, 22, 25-33, 51-64 and 67-68 were rejected as obvious over Ismert, Patent No. 6, 126,122.

Independent Claim 1 defines “at least one cap sized and configured to be placed over the two inclined surfaces forming one of the V-shaped notches, the cap extending over that notch and over a portion of the exterior side of the corresponding inclined surface forming the notch.” This is shown in the adjacent figure from the application in which the cap 70 is placed over the V-shaped supports.

The specification describes the preferred embodiment as having a cap that “is basically stretched on or held on the supports 28, 52.” App. at ¶114.



As seen from the adjacent images from Ismert, Ismert has two parallel V-shaped walls 111 each of which extends from arm-to-arm. A cushion 52 is inserted between those walls and between the arms. This cushion 52 of Ismert is said to be a cap extending over the notches but not over a portion of the side of the corresponding inclined surfaces forming the notch. Office Action at pg. 3. The differences between Ismert's inserted cushion and the claimed cap is said to be obvious because Applicant has not shown that the cap is used for any particular purpose or that the cap provides any advantage. *Id.*



Such advantages are disclosed. Paragraph 115 of the application describes the cap as providing a better grip on the pipe and as dampening noise from the pipe. In contrast, Ismert says its “resilient pad 52” is merely “used for cushioning the pipe 24 ... particularly where the pipe 24 is plastic.” Col. 4, line 67-Col. 5, line 4. Plastic pipes are softer and more likely to be cut and damaged by tightly clamping the plastic pipe between the narrow edges of the notches formed by walls 22 of Ismert. Ismert says nothing about better gripping. Ismert says nothing about sound dampening. Indeed, sound travels better in metal or copper pipes which are better situated to withstand the narrow edges of Ismert's notched walls, yet Ismert says the cushion 52 is “particularly” suited for plastic pipes which do not transmit noise as well as metal pipes. There is thus no basis in Ismert for speculating that Ismert's cushion 52 functions the same as the claimed cap which has a different construction than Ismert's cushion.

Indeed, Ismert shows the pipe 26 as supported only by the cushion 52 that in turn is held between notched walls 22 so that the walls do not exert a force toward the pipe, but instead only hold the cushion in place with lateral forces while the cushion rests against the base of the clamp and supports the pipe. Thus, when Ismert's cushion is used the pipe is never supported by the notched walls 22 because the cushion carries the weight of the pipe. In contrast, the claimed cap extends over the exterior sides of the notch and is interposed between the inclined surface and the pipe so the inclined surface supports the pipe through the cap and the inclined surface carries the weight of the pipe. Cl. 1 (“the cap extending over

that notch and over a portion of the exterior side of the corresponding inclined surface forming the notch and being interposed between the inclined surfaces and the elongate member during use of the clamp assembly.”).

Further, to the extent the Office Action says the Applicant must prove that the claimed cap provides advantage or purpose not found in Ismert, that is believed to be an incorrect requirement. The Patent Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). It is the Patent Office’s burden to prove obviousness. It is not applicant’s burden to prove a claimed structure performs better than a different structure found in the prior art. Nonetheless, as discussed above, Applicant’s different structure is believed to provide different and superior advantages over the prior art.

Finally, Applicant’s claimed structure is simply not found in the cited patent because the cited Ismert patent supports the pipe differently when the cushion is used. In Ismert, when the cushion is used only the cushion supports the pipe against the base of the clamp and none of the weight is carried by the notched side walls 22. A cross-section orthogonal to the length of the pipe so the pipe shows as a circle in the cross-section, will show abutting cross-sections of the circular pipe and cushion, along with the cushion abutting the base of the keeper block plate 31, but does not show the wall 22 abutting the cushion in the cross-section because only the cushion (not the wall 22) supports the pipe. A similar cross-section through Applicant’s claimed embodiment will show an abutting relationship between the cross-section of the pipe and the cap, the cap and the inclined surface forming the notch, the inclined surface and the base of the clamping block, because the cap is interposed between the pipe and the inclined surface that forms the notch so that inclined surface at some point carries the weight of the pipe. There is no suggestion in the prior art to modify Ismert’s cushion to achieve the claimed combination.

Reconsideration and withdrawal of the rejection of independent Claim 1 is thus respectfully requested. These same structural differences apply to independent claims 25, 62 and dependent Claim 53 and 60.

**Dependent Claim 4** adds to Claim 1 the further limitation of a Shore 40-60A hardness. The Examiner says no advantage of this range is disclosed. To the contrary,

paragraph 116 says “A material hardness of about 40-60 Shore A is believed suitable. A softer material, Shore 40 and below, dampens better, but is difficult to mold using present technology, and it also tends to break down under high pressure clamping forces.” If the material is too hard, it does not deaden sound transmission. *See* Para. 124.

Further, in Ismert the cushion 52 forms a block that supports the pipe whereas the claimed combination uses a thinner cap interposed between the pipe and a supporting inclined wall. The applications are different and one skilled in the art would not obviously use the same material for each. Reconsideration and withdrawal of the rejection of independent Claim 4 is thus respectfully requested.

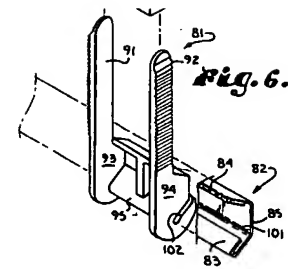
Claim 5 defines a cap that fits over opposing sides and ends of the surfaces forming the V-shaped notch. Ismert does not have a cap, and because its cushion 52 is located between the opposing inclined side walls 22 and the opposing ratchet arms, there is no cap fitting over the ends of the surface forming the V-shaped notch. Reconsideration and withdrawal of the rejection of independent Claim 5 are thus respectfully requested.

**Claim 15** adds to Claim 1 the requirement for a rib extending a substantial length of the arm. This is rejected as obvious as a matter of design choice. No prior art is cited showing a rib. The rib reduces flexibility and limits the ease of aligning the ratchet arms with the keeper blocks or clamp blocks. It is not a matter of mere design choice. Further, claim 15 is amended to define the rib located on the face of the arm having the ratchet teeth with ratchet teeth on each side of the rib. That rib location is described in the application as requiring the use of two ratchet and pawl mechanisms for each arm, thus doubling the parts and requiring smaller parts and a more complex assembly. That added complexity negates the alleged design choice and teaches against it. Reconsideration and withdrawal of the rejection of independent Claim 15 are thus respectfully requested.

**Claim 17 - & Other “Resilient Leg” Claims**

Claim 17 is amended to add the further requirement for a “resilient leg being sufficiently flexible so a user’s finger can move the leg to engage and disengage the clamp from the support member during use of the clamp assembly.” Antecedent basis is found at paragraph 155.

The cited portion of Ismert that is formed by slot 102, cannot meet this requirement, and works in a different way than the defined leg. Ismert uses a retaining clip not a resilient member.



A folded, U-shaped portion of the support fits into the slot 102 where it is retained by Ismert's leg. Ismert's leg is designed to be stiff and to restrain motion, not to be flexible.

This "resilient leg" is also defined in dependent Claims 16, 18, 27 and 32 and similar changes are made those dependent claims. Reconsideration and withdrawal of the rejection of these claims are respectfully requested.

**Claim 25** was rejected for reasons similar to Claim 1. Claim 25 is allowable for the same reason that Claim 1 is allowable. Reconsideration and withdrawal of the rejection of these claims are respectfully requested.

**Claim 26** defines means for reducing acoustic noise. Paragraph 6, 9 and 114 of the application says the caps dampen acoustic noise. The caps are different than Ismert's cushion as discussed regarding Claim 1. The broadest reasonable construction of this means plus function claim element does not encompass Ismert's cushion. Reconsideration and withdrawal of the rejection of this claim are respectfully requested.

**Claim 62** was rejected for the same reasons as Claim 25, which was rejected for reasons similar to Claim 1. Claim 62 is allowable for the same reasons as Claim 1.

**Claim 64** was rejected for the same reasons as Claim 15. Claim 64 defines a rib extending from the same side of the arm as the ratchet teeth with the ratchet teeth on opposing sides of the rib and a pawl engaging teeth on each side of the rib. Claim 64 is allowable for the same reasons as Claim 15. No reference is cited for the structural features of Claim 64.

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The added complexity required to implement Claim 64 teaches against the claimed modification. No *prima facie* case of invalidity has been established.

**Claims 63-64 and 51-61** were rejected for reasons similar to prior claims. Those claims are allowable for the same reasons as those prior claims, and because the parent claims are believed allowable.

**Obviousness Rejection On Ismert And Aremka**

Claims 7-9, 16 and 24 were rejected as obvious over Ismert in view of Aremka.

These dependent claims are believed allowable for the same reasons that the parent claims are allowable.

**Phone Interview**

After the Examiner has reviewed the Office Action the Applicant's attorney requests a phone interview to discuss any concerns the Examiner might have about allowability of the claims and to allow the Applicant to fully understand the Examiner's position on any new or continued concerns on allowability.

If any additional fee is required, please charge Deposit Account Number 19-4330.

Respectfully submitted,

Date: 10/9/07

By:

Lowell Anderson

Customer No.: 007663

Lowell Anderson  
Registration No. 30,990  
STETINA BRUNDA GARRED & BRUCKER  
75 Enterprise, Suite 250  
Aliso Viejo, California 92656  
Telephone: (949) 855-1246  
Fax: (949) 855-6371

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